THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA, AT KAMPALA.

CORAM: **HON LADY JUSTICE A.E.N.MPAGI-BAHIGEINJA**
HON MR.JUSTICE A.TWINOMUJUNI, JA
HON MR.JUSTICE S.B.KAVUMA, JA

CIVIL APPEAL NO. 3/2003

1. **STANDARD CHARTERED BANK (U) LTD**
2. **SAM SEMPALA:::::::::::::::::::::::::::::::::::: APPELLANTS.**

VERSUS

EMAG AG:::::: : :: : ::::::::: .:::: : ::: ::: : : : ::::::: :: : :: : :RESPONDENT.

[Appeal from the judgement of the High court of Uganda (Commercial Division) at Kampala before His Lordship J.M. Ogoola in HCS No.1094 of 1997]

Cases cited:

1. *URA vs. Mabossi SCCA No 26 of 1995*
2. *Kananura vs. Connie Kabanda. Civil Appeal No 31 of 1992 (SC)*
3. *Flint vs. Lovell (1935) 1KB. 354 (CA);*
4. *Davies vs. Powell Duffryn Collierries (1942) AC 601.*

JUDGEMENT OF A.E.N.MPAGI-BAHIGEINE, JA

This appeal is against the judgement and orders of the High Court (Commercial Court) dated 12th April 2002.
The respondent sued the appellants in the High Court jointly and severally for wrongful seizure of goods, detinue and conversion of the said goods. The respondent claimed special damages of US $ 103,916.20 being the value of the goods, general damages for loss of profit with interest at Bank rate from the date of conversion till payment in full.

The learned Judge made the following award:

(a) Shs 65 million special damages being the value of the goods.

(b) Shs 10 million as general damages and interest at the rate of 18% on (a) and (b) from the date of filing suit 'to 10 days date of judgement.'

(c) Interest on the amount (a), (b) and (c) at the court rate from 13/04/2002 until payment in full.

The facts giving rise to this matter are as follows.

On or about 15/11/1996 the plaintiffs who are dealers in Hides and Skins entered into a tanning contract with Al Ahamed Hides and Skins Limited, a Kampala based company dealing in hides and skins which had a tannery in Kampala. The plaintiffs agreed to deliver the hides and skins to the company for tanning through their agent in Kampala.

During the currency of the contract, Standard Chartered Bank Uganda Ltd, hereinafter referred to as the first appellant, placed Al Ahamed company under receivership and sold all goods found in the company's warehouses/stores, amongst which were goods belonging to the respondent.

The first appellant, however, denied contending that when the respondent was called upon to verify their goods, it never did and that the goods, which were sold, did not belong to the respondent. It was further argued that the appellants never seized the warehouses where it was claimed that the respondents' goods were located.

The learned trial Judge's held that the question of location of the goods was irrelevant. Al Ahamed was a bailee of the respondent's goods, regardless of where he had stored them.

The memorandum of appeal comprises the following grounds namely that:

1. The learned trial Judge erred in law and fact when he failed to properly evaluate the evidence on record hence coming to an erroneous conclusion that the goods seized, if at all, belonged to the plaintiff.

2. The learned trial Judge erred in law and fact when he held that the plaintiffs' witnesses' testimony as to which warehouse the plaintiff claimed goods were in is irrelevant.

3. The learned trial Judge erred in law and fact when he reached the erroneous conclusion that the appellant is liable for the acts of the 2nd appellant in so far as it received the proceeds of the sale.

4. The learned .Judge erred in law when he held that the 2nd appellant in executing his duties as receiver manager was not the agent of Al Ahmed Hides and Skins Ltd but the agent of the 1st appellant.

5. The learned trial Judge erred in law and fact when he held that the 2nd appellant did actually seize and convert the respondent's hides and skins whereas there is no evidence on record to such finding.

6. The learned trial Judge erred in law when he held that the 2nd appellant was not an agent of Al Ahmed Hides and Skins Ltd.

The respondent cross-appealed seeking orders enhancing the 'awards of special' and general damages.

Turning to the main appeal, Mr. Bernabas Tumusingize, learned counsel for the appellant, argued grounds land 2 together. He contended that there was contradicting evidence regarding the location of the goods. He pointed out that Illario Genardine, PW1, was resident in Switzerland and could not competently know where the goods were. He was relying on PW2, Basheer Ahmed for any information regarding the goods. PW2 confirmed this position:
"I was in charge of EMAG AG'S business in Uganda. The warehouse of Madhavan is next to Bata, 6th Street. That is where the goods were. Of these goods, those in production were in the tannery I can not tell with certainty what goods were found in the warehouse. My duties involved ascertaining the input and output of the goods in the warehouse(s)."
Referring to the foregoing evidence, Mr. Tumusingize submitted that it was very clear that the respondent did not know where their goods were and could thus not verify them. The 1st appellant could thus not be held responsible.

Regarding the second appellant, (DW1) learned counsel pointed out that lie acted for only a very brief period before handing over to Mr. Mawanda to act as receiver/manager.
He testified having handed over to Mr. Mawanda a warehouse that was still locked. They never opened the tannery. He was not even aware that Al Ahamed had a warehouse on 6th Street, where the goods were supposed to be. Mr. Mawanda, DW2, denied having found any hides and skins neither in the tannery nor in the 6th Street warehouse.

Mr. Tumusingize pointed out that that foregoing evidence not having been challenged should have been taken as the truth, citing **URA vs. Mabossi SCCA No 26 of 1995**. He submitted that the witnesses told the court on oath where their goods were. The learned Judge should not have substituted his views. There were 2 warehouses but the tannery was is empty when

opened. Mr. Kakuru's letter Ex P5 did not indicate premises where the goods were.

The learned Judge therefore came to the wrong conclusion in as much as he said it was immaterial where the goods were. The claim in conversion should fail.
Mr. Kakuru submitted that the issue was a contract of bailment. Al Ahamed was a bailee and on top of that he had a contract to tan. Al Ahamed had possession and control of the goods but no property in them. He had to act according to the contract of bailment and tanning contract.
In this regard it was up to him to store them at 6th or 3rd Street warehouses or the tannery, according to the circumstances.

The learned Judge was correct, that locus was irrelevant. What was vital is that they were under the control of Al Ahamed. It was not a question of warehouses. The evidence was clear, the description was of goods found at the 3rd Street warehouse. He prayed court to find for the respondent.

The learned Judge found as:
"....baseless defendant's allegation that EMAG AG's hides and skins were not among the goods seized and sold. The allegations are apparently based on the testimony of PW1 and PW2 to the effect that to plaintiff's goods were in the 6th Street warehouse. In this court's view, it is irrelevant in which one of Al Ahamed's many premises the hides and skins were actually located. In that, none were in the tanners' and some in the warehouse. Kakuru's letter (Exhibit 5), makes it abundantly clear that EMAG's hides and skins were in AL AHAMED's 'warehouse/tannery' i.e. That some of the goods were in the warehouse (at the 6th Street premises) while others were in the tannery (at the Jinja Road premises). All assets and stocks in possession of ALHAMED (including plaintiff's stocks of hides and skins) wherever located, were seized by the defendant and were thereafter managed and controlled exclusively by the successive Receivers. It is therefore immaterial exactly where EMAG's goods where located."

I cannot fault the learned Judges exhaustive evaluation of the evidence and the finding. The respondent did all that was humanly possible to notify the appellants that Al Ahamed had in

his possession (store/warehouse) their hides and skins which he had contracted to tann and that Al Ahamed was not the owner but a mere bailee.

The volume of correspondence over the matter (Exhibits p2, p3, p4. and S 1) was more than sufficient to put the appellants on notice as to the veracity of their claim that indeed ALHAMED has their goods in his possession. As rightly pointed out by the learned Judge Al Ahamed was at liberty to store the respondent's goods in any of its warehouses indeed the locus was irrelevant. I find the appellant's response to the claim too lack-a-dai-si-cal as reflected in DW1's evidence under cross examination

10 (at page 48 line 8):

"I was informed that EMAG AG wrote to Standard Chartered (London) saying they had a contract with AL AIIAMED for tanning hides. London wrote to Standard, Kampala inquiring about this. We responded to say Mr.Kakuru had sent us a claim, but he did write to us to show title. (sic) WE didn't investigate the claim. We could not go by Kakuru's mere claim (without evidence of title to the goods)."

There was overwhelming evidence of identification of the goods. Furthermore, since the other stores were empty and hides were found only in the store on the 3rd Street, the appellants should have exercised reason in view of the fact that there was already sufficient correspondence in their hands, that AL AHAMED was holding their goods especially by Mr. Kakuru, in his letter Exhibit 5 to Mr. Sam Sempala which reads:

"Our clients recently purchases Shs 72, 000 pieces of Uganda (sic) were divided goat skins SEL 3 0/40/30 1/2/3 average weight about 100 LBSI100 skins from M/S Basajjabalaba Hides and Skins company limited, P.O. Box 71. Bushenvi and delivered that same to Al Ahamed Hides and Skins to have the same tanned into glue. Of the above 24,000 pieces of wet blue have since been shipped to our clients. The balance is still at Al Ahamed warehouses/tannery."

The following are particulars of our client's property:

- **10,691 Pieces UGANDA WETBLUE GOATSKINS WHICH HAVE ALREADY BEEN SELECTED.**

- **16,000 Pieces UGANDA WETBLUE GOATSKINS WHICH HAVE STILL TO BE SELECTED.**

- **20,000Pieces UGANDA THESE HAVE NOT BEEN TANNED. to - 9,000 Pieces UGANDA WETBLUE GOATSKINS GRADE 6 BOUGHT FROM ALHAMED PAID 369 kilograms UGANDA SUSPENSION AIRDRIED HIDES GRADE 4.**

- **1,621 kilograms UGANDA SUSPENSION AIRDRIED BOVINE BELLIES**.

By this letter therefore we request that our client's goods be released to us without any further delay, In any case within 7 days from date hereof.
Our clients had already informed Standard Chartered Bank 2 (Uganda) Ltd of their relationship with Al Ahamed Hides and Skins
vide letter to the managing Director dated 25/2/1997. And specifically, of the 72.000 pieces of hides delivered for tanning by our client to Al Aha med Hides and Skins Limited (A copy is attached for ease of reference). Let us hope that we shall have this matter resolved amicably without resorting litigation (sic).

Signed: Kakuru and company
c.c. EMAG AG.

Agreeing with the learned trial Judge, it is true that receivers are by law, 5 agents of the company that is placed under receivership as reflected in the clause of the debenture (Exhibit D2) but for all practical purposes receivers are the instrument by and through which the creditor (such as the 1st appellant) come to realise their intent and purpose of being paid their claim. I would thus harbour the view that Mr. Sempala declined to investigate the claim by EMAG AG and have the goods released to it because at the same time he was Manager Special Assets and had to see to it that the 1st appellant (Bank) got its claim.
I therefore find myself unable to agree with Mr. Tumisingize's argument that the respondent failed to establish title and location of their goods.
The appellant never denied that the goods at 3rd Street warehouse did not answer the

description given by Mr. Kakuru and that those goods found in that warehouse clearly belonged to Al Ahamed. It was incumbent upon the appellants to contradict Mr. Kakuru's letter.
Grounds I and 2 would, in my view, fail.

Regarding ground No 3 that the learned trial Judge erred in law and fact when he reached the erroneous conclusion that the first appellant is liable for the acts of the second appellant in so far as it received the proceeds of the sale.
The first appellant was the creditor in this case and the second appellant was the first receiver manager who was appointed. He had all the information regarding the relationship between EMAG AG and Al Ahamed and did not investigate it as pointed out above. Al Ahamed's company records constituted all the necessary information. The second receiver used to report to Mr. Sempala and both thus received the proceeds of the sale which Mr. Sempala knew were from goods that were claimed but were ought-rightly never investigated as a result of their complacency.
The goods were singularly described in Mr. Kakuru's letter and the receiver was conceding to the actual presence of these goods by promising to investigate their ownership. M/S Sebalu and Lule's letter of 24th April 1997 did not in anyway dispute the physical presence of the EMAG AG's hides and skins yet the receivers pressed ahead for the sale.
Ground 3 would also fail.
Ground 4 was abandoned.

Regarding ground 5, Mr. Tumusingize argued that the receiver/manager was appointed as a stop-gap. He acted only for a short while before handing over to Mr. Mawanda. He had never opened the warehouse at 3rd Street and nor did he know what was inside. He handed it over when it was still locked.
Learned counsel submitted that it was wrong for the learned Judge to find Sempala guilty of conversion. He argued that Mr. Sempala did not refuse to hand over the goods but only needed to ascertain title.' He was just not sure at that time. It was not an unconditional refusal to hand over the goods. In his view Sempala acted reasonably. He never sold the goods but simply handed them over to Michael Mawanda.

Mr. Kakuru contended that Sam Sempala was liable for his refusal to hand over the goods after seeing the letter identifying them. This is when the act of conversion became complete. Sempala handed over to Mawanda what he had already converted. Sempala failed to act reasonably. He did not verify by asking the Directors of Al Ahamed nor did he call a meeting of the Directors.

To sustain a suit in conversion and detinue, there has to be a seizure of goods belonging to another person or dealing with the goods of a person so as to constitute unjustifiable denial of his/her right in them or an assertion of rights inconsistent with the owner's rights.
Such seizure should ultimately be followed by a demand by the owner and a refusal by the defendant to hand over the same.
From the evidence on record, the second appellant acted unreasonably, 15 him, being an agent of the first appellant and Mr. Mawanda directly reporting to him. Mr. Mawanda should not have sold before having the claim investigated or disproved. It would appear that the claim was not investigated because the Bank's interest had to be satisfied. To Mr. Mawanda was handed over already seized and converted property.
I would disallow ground 5 as well.

Regarding ground 6 that the learned Judge erred in law when he held that the second appellant vas not an agent of Al Ahamed Hides and Skins Ltd. This has been covered under grounds land 3. In law, a receiver is an agent of the company under receivership but in the instant case, the appointment of Mr. Sempala as a receiver yet at the same time, was an employee of the Bank a manager in charge of special assets, marked him out as an agent of the first appellant who had to see to it that the debt was recovered at all cost. The learned trial Judge was thus right to hold that he was actually not an agent of Al Ahamed.
The main appeal would thus fail in toto.

The respondent cross-appealed on the following grounds:

1. **That the learned trial Judge erred in law and in fact when he did not grant the whole claim for special damages as the same had been proved.**

2. **That the learned trial Judge erred in law and in fact when he granted general damages that were inordinately too low in the circumstances.**

The following orders were sought:

(a) Enhancing the award of special damages to US $ 103916.

(b)Enhancing general damages to Shs 50, 000,000/=

(c) Costs of the appeal.

Mr. Kakuru submitted that the Judge found that the goods sold belonged to the respondent. He could therefore not have awarded as special damages money realised by the receiver in forced sale situation. The money realised was not the value of the goods.
The Judge should have accepted the value put on the goods by the respondent, if not he should have awarded higher general damages on the ground that the forced sale did not realise the real value. Mr. Kakuru suggested a figure of Shs 50 million, pointing out however that Mr. Illario Genardine (PW 1) trading manager for EMAG AG had testified regarding the value of the goods, thus:
"The total of these goods was over US $ 102,000. Of the original 72,000 pieces of skin, some 42,000pieces had been shipped to EMAGAG prior to receivership leaving a balance of 48,000.
In addition we ourselves had another 10,000 pieces which we kept in the tannery and some raw hides in the warehouse."
Mr. Kakuru submitted that there was no evidence to challenge that value.

Mr. Bernabas Tumusingize, responding, pointed out that special damages must be pleaded and proved, citing **Kananura vs. Connie Kabanda. Civil Appeal No 31 of 1992 (SC).** He submitted that the figure of US $ 103900 was never proved. It has no basis. There was no evidence of similar transactions indicating the price per unit and thus the total value.
Learned counsel pointed out that they were under no obligation to challenge a figure not

proved. He reiterated that the goods found in the warehouse and sold were different from those being claimed and that the various figures given did not add up. Furthermore, the learned Judge gave Shs 65 million as the value the goods in the store were sold at. He prayed court to dismiss the cross appeal.

The learned Judge found:
"it is obvious that the Defendants cannot possibly return the goods in specie and this court will not make any such idle order. It is therefore evident that the only valuable remedy in this case is to order a return of the equivalent mandatory value of the goods. In this regard, Court has been presented with two different figures— namely $ 103,916.20 per plaintiff's plaint and the written submission of learned counsel for the plaintiff. Conversely court has also been presented with a figure of Shs 65million. The defendant's figure of Shs 65 million, which is expressly considered by Defendants' Written Statement of Defence, is the amount that the receiver sold the particular hides and skins. On the other hand, court was not told the basis for the plaintiff's figure of $ 103,916.20. Court is persuaded that the more realistic of those two **the figure is approximately Shs 1.78B/=.**

Similarly the plaintiffs' figure of US $ 30,000 as general damages is **not backed up at all. In my view, a more pragmatic figure would be on the lines of 15-20% of the special damages. I would accordingly award plaintiff Shs l0m/= as general damages."**

An appellate court will only interfere with the trial Judge's assessment of damages if the Judge acted on some wrong principle of law or that the amount awarded was so extremely high or so very small as to make it, in the judgement of the appellate court, an entirely erroneous estimate of the damage to which the appellant is entitled **Flint vs. Lovell (1935) 1KB. 354 (CA); Davies vs. Powell Duffryn Collierries (1942) AC 601.**
Thus there are only two distinct grounds of interference by this court: that the Judge has acted on a wrong principle of law, and that he has made an entirely erroneous estimate of the damages.

The learned Judge considered:

"In paragraph 9 of their plaint (both original and amended) plaintiff prays for "return of the goods or their value amounting to US $103.916.2O."

Additionally they also prayed for general damages, which (in the final written submissions of learned counsel for plaintiffs) were put at US $ 30,000.

Defendants vigorously challenged the prayer for special damages, on the ground that the plaint does not particularise those damages, contrary to the requirements of the law. Interestingly, the Defendants did not raise the challenge in their Written Statement of Defence; neither did they raise it as an interlocutory point in the course of the hearing of the suit. Not at all. It is only belatedly in course of his written submissions, that learned counsel for Defendants raised the issue.

Whether this was an after thought or not, I do not know. At any rate, the response by plaintiff's counsel is to the effect that plaintiff's claim is for what (sic) return of its confiscated goods or their value amounting to US S 103.916.20.

Given a statement in a plaint, I am at a loss as to what further particulars Defendants needed The detailed specifications of the confiscated 72,000 hides and skins were contained in, inter alia, attachments B10. H (Exhibit P5) and G (Exhibit P4). All these annexes, which were duly attached to the plaint from part of over all pleadings of the plaintiffs in this suit. I am fully satisfied that the pleading contain full particulars of goods which the plaintiff now prays should be returned to him — failure to return the goods in specie, the plaintiff prays for the mandatory value of the goods..."

It is apparent that the goods were sufficiently particularised as pointed out by the learned Judge but their value was not as required by law. It is trite that special damages have to be specifically pleaded and proved.

Mr. Illario Genardine (PWl) simply stated: that "**the total value of the goods was over US $ 102,000."** This figure is too arbitrary. Similarly the figure of; Shs 65 million awarded by the learned Judge which was haphazardly realised at the auction by the highest bidder, is even more arbitrary. It did not and normally does not represent the actual value of the goods sold. Most importantly as it has been pointed out that the receiver was an agent of the appellate Bank, his main interest was first and foremost to recoup his loss and nothing else.

Under the circumstances therefore, and doing the best I can I would leave intact the figure of Shs 65 million awarded by the learned Judge as special damages and award Shs 40 million as general damages.

Since my lords Twinomujuni and Kavuma, JJA both agree, the respondent will be entitled to: Special damages of Shs 65million; Shs 40 million general damages; both awards to carry interest at 20% from the date of this judgement till payment in full with costs of the suit here and below.

Dated at Kampala this 23rd day of August 2005.

A.E.N.MPAGI-BAHIGEINE

JUSTICE-OF-APPEAL

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CORAM: HON LADY JUSTICE A.E.N. MPAGI-BAHIGEINE, JA

HON MR. JUSTICE A. TWINOMUJIJNI, JA

HON MR JUSTICE S.B.K. KAVUMA, JA

CIVIL APPEAL NO.3 OF 2003

1. STANDARD CHARTERED BANK (U) LTD}
2. SAM SEMPALA }……..…….APPELLANT

VERSUS

EMAG AG .....RESPONDENT

{Appeal from the decision of
the High Court of Uganda (Commercial Division)
at Kampala, before his Lordship J.M. Ogoola
in HCCS No.1094 of 1997}

JUDGMENT OF TWINOMUJUNI, JA

I have read in draft the judgment of my Lord, Hon. Justice A.E.N. Mpagi-Bahigeine, JA. I entirely agree with the reasoning and conclusion arrived at by her. I have nothing useful to add.

Dated at Kampala this 23rd day of August 2005.

Hon Justice Amos Twinomujuni

JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CORAM: HON. LADY JUSTICE A.E.N. MPAGI-BAHIGEINE, JA.
HON. MR. JUSTICE A. TWINOMUJUNI, JA.
HON. MR. JUSTICE S.B.K. KAVUMA, JA.

CIVIL APPEAL NO. 3 OF 2003

1. STANDARD CHARTERED BANK (U) LTD}
2. SAM SEMPALA }……APPELLANTS

VERSUS

EMAG AG…….RESPONDENT

(Appeal from the decision of the High Court of Uganda (Commercial Division) at Kampala, before His Lordship J.M. Ogoola in HCCS No. 1094 of 1997)

JUDGMENT OF STEVEN **B.K. KAVUMA, JA.**

I have read in draft the judgment of My Lord Hon. Lady Justice A.E.N. Mpagi-Bahigeine, JA.

I agree with the reasoning adopted and the conclusions arrived at by her Lordship. I have nothing useful to add.

Dated at Kampala this 23rd day of August 2005

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CORAM: HON.JUSTICE A.E.N.MPAGI BAHIGEINE, JA HON.JUSTICE A.TWINOMUJUNI, JA
HON.JUSTICE S.B.KAVUMA, JA

CIVIL APPEAL NO.3/2003

1. STANDARD CHARTERED BANK (U) LTD

2. SAM SEMPALA:: APPELLANTS.

VERSUS

EMAG AG:: **RESPONDENI.**

[Appeal from the judgement of the High Court of Uganda (‘commercial Division) at Kampala before His lordship IM. Ogoola in HCCS No.1094 of1997]

HON.JUSTICE A.E.N.MPAGI BAHIGEINE, JA

ORDER.

Under the slip Rule the order regarding “interest at 20% per annum from date of this judgement until payment in full” is hereby deleted.

A.E.N.MPAGI BAHIGEINE

JUSTICE OF APPEAL

18/10/05